APPENDIX

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Case No. CV-89-2505-PR

GEORGE SHERIDAN, JUDY SHERIDAN and GEORGE SHERIDAN AUTOMOTIVE, INC.,

Plaintiffs,

v.

JACOB S. BEHR and NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Defendants.

ORDER

This cause coming on to be heard before this Court on March 27, 1992, on Defendant Northwestern Mutual Life Insurance Company's Motion for JNOV, New Trial or Remittitur and for a hearing pursuant to *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986); *Green Oil Co. v. Hornsby*, 539 So.2d 218 (Ala. 1989); and *Ala. Code* § 6-11-23(b), based upon the award of punitive damages by the jury on December 19, 1991.

On December 19, 1991, the jury returned a verdict in favor of the Plaintiffs and against Defendants Northwestern Mutual Life Insurance Company and Jacob Behr. Jacob Behr was found liable for $400,000.00 in compensatory damages and $12,463,624.00 in punitive damages, and Northwestern Mutual was determined to be vicariously liable for this amount. In addition, Northwestern Mutual was found independently liable for $400,000.00 in compensatory damages and $12,463,624.00 in punitive damages. Thus, the jury determined that Northwestern Mutual was liable to plaintiffs for $800 000.00 in com-

pensatory damages and $24,927,248.00 in punitive damages. On December 19, 1991, this Court entered a judgment on the verdict in these amounts.

In rendering its findings, this Court considered the evidence admitted in the trial of this case as well as the briefs and additional evidence submitted by the parties at the hearings conducted on March 6, 27, and 28, 1992.

Ample evidence was presented at trial which supports the total compensatory damage award of $800,000.00 against Northwestern Mutual. The issue to be determined is whether the punitive damages award of $24,927,248.00 is appropriate and justified by the evidence. Having considered the evidence presented at the trial of this case and at the hearings conducted by this Court, this Court finds that the award of punitive damages in the total amount of $24,927,248.00 is not excessive and is appropriate for the reasons that follow.

Plaintiffs proved that Northwestern Mutual's District Agent, Jacob Behr, misrepresented to them that, in exchange for their initial contribution of $12,026.25, he would enroll them in a qualified retirement pension plan with Northwestern Mutual. In fact, plaintiffs discovered more than one year later that they had no such plan. Plaintiffs further proved that Northwestern Mutual was negligent and wanton in its contracting of Behr, its monitoring of him, and its failure to detect and deter his fraudulent activities while he was an agent for the company. It is this latter claim of plaintiffs which distinguishes this case from other "renegade agent" cases; plaintiffs alleged and proved at trial that Northwestern Mutual played an active role in allowing Behr to defraud plaintiffs and at least fifty additional Northwestern Mutual policyowners.

Clear and convincing evidence was presented at trial that Northwestern Mutual was aware of the fraudulent activities on the part of its District Agent long before

Behr took money from these plaintiffs. The jury found Northwestern Mutual to have been wanton in its contracting of Behr, its monitoring of him, and its failure to detect and deter his wrongful activities. In considering the degree of reprehensibility of Northwestern Mutual's conduct, this Court considered the duration of the conduct, the degree of Northwestern Mutual's awareness of the hazard which the conduct caused or is likely to be caused in any concealment or cover up of that hazard, and the existence and frequency of similar past conduct. Evidence was submitted at the trial that numerous lawsuits had been filed in his home county against Behr prior to his being contracted by Northwestern Mutual. Jacob Behr lied on his application to become a Northwestern Mutual agent, and Northwestern Mutual discovered this misrepresentation prior to approving his contract. Other Northwestern Mutual agents were constant in their reports to Northwestern Mutual's General Agent of Behr's wrongful activities. Several of Behr's clients complained to Northwestern Mutual regarding improprieties in their insurance. Numerous lawsuits were filed against Behr after he became an agent for Northwestern Mutual, and in one such lawsuit, Behr was held liable for violating a federal odometer statute and for fraud in knowingly misrepresenting the mileage on a Cadillac which he traded in to a dealership. Evidence was presented at trial that throughout his career with Northwestern Mutual, Behr's wrongdoing was made known to Northwestern Mutual's president and to numerous departments at its home office. Thus, the duration of Northwestern Mutual's wrongful conduct was the entire duration of Behr's agency with Northwestern Mutual; the degree of Northwestern Mutual's awareness of Behr's improprieties was high; and, the concealment or cover-up of the hazard consisted in Northwestern Mutual's continuing to allow Behr to represent the company.

The Sheridans thought they were buying security for their retirement. They entrusted a substantial portion of

their income to Northwestern Mutual's top agent in the Dothan area. The Sheridans were duped for over a year by fabricated documents and constant reassurances from Behr. In defrauding the Sheridans, Behr was merely acting in accordance with a pattern of fraudulent conduct which he had demonstrated years prior to his becoming a Northwestern Mutual agent.

There was also ample evidence that Jacob Behr sold an extremely large amount of insurance for Northwestern Mutual. The jury justifiably could have believed that Behr's success at selling insurance played a key role in Northwestern Mutual's decision to allow him to represent their company. The jury indicated as much with its punitive damages award; in 1988 Behr sold $12,463,624 of insurance on behalf of Northwestern Mutual. Northwestern Mutual made a conscious decision to keep a top-selling agent under contract with the knowledge that he was a threat to defraud its policyowners.

Certainly this Court is mindful that this verdict is large. Yet this Court finds that the amount of the punitive damages award bears a reasonable relationship to the harm that is likely to occur from Northwestern Mutual's conduct as well as to the harm that actually has occurred. The harm which was committed is even more grievous because Northwestern Mutual kept Behr in a position of trust to further its goal of profit even though it was foreseeable to them that additional harm would occur.

The Court finds that the economic impact of the verdict on Defendant Northwestern Mutual is slight. In 1991, the company had assets exceeding $35.7 billion. Designated reserve accounts contain $2.7 billion. The company has admitted that it has sufficient resources to pay the judgment if it should be affirmed. Clearly, the financial position of Northwestern Mutual does not support any reduction in this verdict.

The plaintiffs provided testimony at the hearing that their attorneys had expended almost 3000 hours and had spent in excess of $110,700.00 in preparation for this case. While the law does not allow compensation to plaintiffs for this effort, public policy demands that such efforts be encouraged. Accordingly, the Court finds that the verdict should be high in order to encourage plaintiffs such as these, and their attorneys, to pursue this type of case. Thus, this factor does not weigh in favor of reducing this verdict.

Mitchell Polinsky, a Professor of Law and Economics at Stanford University, testified on behalf of Defendant Northwestern Mutual at the *Hammond* hearing and offered certain opinions regarding the deterrent effect of punitive damages on corporations. This Court rejects his testimony and finds that his opinions fly in the face of the Alabama legislature, the Alabama Supreme Court, and the citizens of the State of Alabama.

The Court has considered all the other evidence presented by Northwestern Mutual at the *Hammond* hearing and finds that such evidence is inapplicable to all other possible mitigating factors. There was no evidence that Northwestern Mutual made any good faith effort to remedy the wrong or that the plaintiffs failed to afford Northwestern Mutual the opportunity to adequately remedy the wrong. In attempting to offer evidence of the verdict's impact on the innocent third parties, Northwestern Mutual provided testimony that if this verdict is affirmed, it might pull out of Alabama and pay this verdict out of future dividends due only those policyowners who live in Alabama. This amounts to nothing more than economic coercion to which this Court refuses to succumb. Clearly, the rights of present Northwestern Mutual policyowners will be protected and others interested in purchasing insurance will simply choose to buy from another company. The testimony of two Northwestern Mutual policyowners who were satisfied with settlement proposals offered them

by Northwestern Mutual certainly has no bearing on mitigating damages in this case. In addition, the outcomes of other cases which are now pending against Northwestern Mutual are uncertain and cannot be considered in mitigation.

Northwestern Mutual has filed an amendment to its Motion for Remittitur seeking the establishment of a common fund to pay to these plaintiffs and all others who are successful in obtaining punitive damages against the company based on the conduct of Behr. The relief sought by Northwestern Mutual seeks to contravene the procedure established by the Alabama legislature and our supreme court for assessing and reviewing punitive damages awards. Evidence was presented at the *Hammond* hearing which clearly showed that this verdict has not sufficiently punished or deterred Northwestern Mutual and that future plaintiffs may be entitled to additional punitive damages in order to acomplish the goals of punishment and deterrence.

It is the conclusion of this Court that the verdict was not based upon bias, passion, prejudice, corruption, or other improper motive, but instead was the product of the jury's careful and studious consideration of the evidence and applicable law. This conclusion is based in part on this Court's observing all of the parties to the trial, their respective attorneys, and the jury and its reaction to all of the others. The jury was justified in awarding these damages to punish Northwestern Mutual and to prevent similar wrongs in the future. The imposition of these damages in this case creates a strong incentive for vigilance on the part of all insurance companies doing business in this state. The jury arrived at an amount that it considered necessary to vindicate the public interest by eliminating the reprehensible conduct of these defendants and in punishing them appropriately. This verdict is not so large that it goes beyond an amount necessary to accomplish these goals. This verdict will have little, if

any, impact on Northwestern Mutual and other insurance companies unless it is substantial.

Twenty-six million dollars is a lot of money to most individuals and companies, but it is not a lot of money to Northwestern Mutual.

This Court has previously denied Northwestern Mutual's Motion for JNOV or New Trial and has further considered its Order in light of the evidence produced at the *Hammond* and *Green Oil* hearing. Northwestern Mutual has not proved that it has been unconstitutionally deprived of its property, and thus this Court is of the opinion that Northwestern Mutual's Motion for JNOV, New Trial or Remittitur, together with all amendments thereto, is due to be and the same is hereby denied.

DONE this the 10th day of April, 1992.

/s/ Charles Price
CHARLES PRICE
Circuit Judge

CC: Ronald G. Davenport, Esq.
Ted Taylor, Esq.
Leah Taylor, Esq.
C.C. Torbert, Jr., Esq.